

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DIANE CARUANA,

Plaintiff.

19-CV-733-JLS-MJR

v.

NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION (DOCCS),

Defendant.



DECISION AND ORDER

Plaintiff Diane Caruana commenced this action against her employer, Defendant New York State Department of Corrections and Community Supervision (DOCCS), alleging disparate treatment based on gender and retaliation in violation of Title VII, 42 U.S.C. § 2000e *et. seq.* Dkt. 1. On July 31, 2019, the Court referred the case to United States Magistrate Judge H. Kenneth Schroeder, Jr., to, among other things, hear and report upon dispositive motions pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Dkt. 5.

Defendant moved to dismiss on July 30, 2019. Dkt. 4. Plaintiff responded, Dkt. 7, and Defendant filed a reply. Dkt. 10. On January 14, 2022, Judge Schroeder issued a Report, Recommendation and Order (“R&R”) that recommends granting Defendant’s motion because Plaintiff failed to file her administrative

complaint with the New York State Division of Human Rights within 300 days of an alleged unlawful employment practice. Dkt. 11. Neither party filed objections.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which an objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Otherwise, a district court must "modify or set aside any part of [a magistrate judge's] order that is clearly erroneous or is contrary to law." Fed. R. Civ P. 72(a). An order "is clearly erroneous or contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of procedure." *Tracey v. NVR, Inc.*, 791 F. Supp. 2d 340, 342 (W.D.N.Y. 2011) (internal quotations and citation omitted).

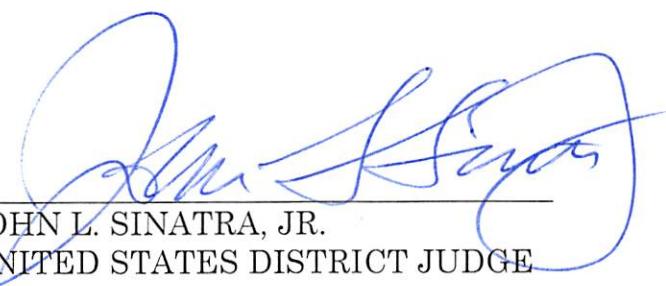
Based on the Court's review and the absence of any objections, the Court accepts and adopts the R&R.

CONCLUSION

For the reasons stated above and in the R&R, Defendant's motion to dismiss is GRANTED. Plaintiff's complaint is DISMISSED with prejudice. The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: April 20, 2022
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE